

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**ALLSTATE INSURANCE COMPANY,
et al.,**

Plaintiffs,

V.

**RECEIVABLE FINANCE COMPANY,
L.L.C., et al.,**

§§§§§§§§

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
AUG 16 2004
CLERK, U.S. DISTRICT COURT
By CB Deputy

Civil Action No. 3-01-CV2247-N

**DEFENDANTS' PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

NOW COME Defendants Accident & Injury Pain Centers, Inc., Receivable Finance Company, LLC, Robert Smith, Lone Star Radiology Management, L.L.C., White Rock Open Air MRI, L.L.C., North Texas Open Air MRI, L.L.C., Rehab 2112, L.L.C., Metroplex Pain Center, Inc., Lacidem Management, BS Limousine, L.L.C., Thomas Rhudy, D.C., Louis Saucedo, D.C., Kenneth Lustik, D.C., Mark Rayshell, D.C., Larry Parent, D.C., Christopher Holowiski, D.C., Carey Fabacher, D.C., Patricia Johnson, D.C., Gholamreza Assadolahi, D.C., Kyle Campbell, D.C., Chad Blackmon, D.C., Ramesh Sanghani, D.C., Marlon Padilla, M.D., Marlon D. Padilla, M.D., P.A., Advanced Medical Systems & Solutions, PLLC, Dee Martinez, M.D., and present these proposed findings of fact and conclusions of law.

I.

The Defendants' requested relief includes certain requests for declaratory relief. These proposed findings of fact and conclusions of law are presented in connection with Plaintiffs' requests for declaratory relief.

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PROPOSED FINDINGS OF FACT

Finding of Fact No. 1

A&I chiropractors were not coerced to make referrals to co-owned diagnostic facilities and to the medical doctors associated with A&I.

Finding of Fact No. 2

Neither Robert Smith nor any other A&I lay personnel, to include Steve Smith and Tina Cheshire, interfered with, or attempted to interfere with, the professional judgment of the A&I chiropractors.

Finding of Fact No. 3

Personal injury attorneys referring patients to A&I did not dictate treatment in regard to the number of MRIs patients were to receive or any other type of treatment.

Finding of Fact No. 4

No non-medical doctor defendants exercised influence and control over medical doctors at any time.

Finding of Fact No. 5

Defendants did not conspire together to (1) defraud Plaintiffs, (2) to violate Texas Healthcare laws, (3) or for any other purpose.

In addition to the above, see the Defendants' contested issues of fact as set forth in the Defendants' Pretrial Order.

Proposed Conclusions of Law

Conclusion of Law No. 1

The Plaintiffs are not entitled to declaratory relief.

Conclusion of Law No. 2

The Plaintiffs have not plead that any lay defendant wrongfully exercised control over the professional judgment of any chiropractor.

Conclusion of Law No. 3

The Plaintiffs have plead no claim for declaratory relief under or in connection with:

- (1) Texas Occupations Code § 201.301;
- (2) 22 Texas Administrative Code § 74.5(c);
- (3) Texas Occupations Code § 201.502(a)(10);
- (4) 22 Texas Administrative Code § 75.1(4);
- (5) 22 Texas Administrative Code § 291.9; and
- (6) 22 Texas Administrative Code § 295.4.

Alternative Proposed Conclusions of Law

Conclusion of Law No. 4

Defendants Robert Smith, Steve Smith, Thomas Rhudy, D.C., A&I, RFC, Dr. Padilla, Dr. Laughlin, and Dr. Martinez have not engaged in the unauthorized and corporate practice of medicine.

Conclusion of Law No. 5

The contracts or agreements between RFC, A&I, and Robert Smith, and medical doctors (M.D.s and D.O.s) are not illegal or void

Conclusion of Law No. 6

The medical fees incurred by patients of the defendant healthcare providers are not illegal or void.

Conclusion of Law No. 7

Defendants Robert Smith and Steve Smith have not exerted control, directly or through others, over the professional judgment of treating chiropractors, and have not engaged in the unauthorized practice of chiropractic.

Conclusion of Law No. 8

Defendants have not violated the following Texas Healthcare Laws:

- (1) Texas Occupations Code § 101.203, and former Revised Civil Statute Article 4512p, §5(b);

- (2) Texas Occupations Code § 102.001, and former Texas Health & Safety Code § 161.091(a);
- (3) Texas Occupations Code § 102.051, and former Revised Civil Statute Article 4505a;
- (4) Texas Occupations Code § 102.006, and former Texas Health & Safety Code §161.092(a);
- (5) Texas Occupations Code § 105.002;
- (6) Texas Occupations Code § 155.001, and former Revised Civil Statute Article 4495b, §3.07(a);
- (7) Texas Occupations Code § 164.052, and former Revised Civil Statute Art. 4495b, § 3.08(15);
- (8) Texas Occupations Code § 201.301;
- (9) 22 Texas Administrative Code § 74.5(c);
- (10) Texas Occupations Code § 201.502(a)(10);
- (11) 22 Texas Administrative Code § 75.1(4);
- (12) 22 Texas Administrative Code § 291.9; and
- (13) 22 Texas Administrative Code § 295.4.

Conclusion of Law No. 10

Defendants have not conspired to defraud Plaintiffs through a scheme of unreasonable and unnecessary treatment and referrals among themselves.

Conclusion of Law No. 11

Defendants have not conspired together to violate Texas Healthcare Laws in order to obtain payments from Plaintiffs and other persons and entities.

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By: Lindy Jones by *lhj* in *slm* w permission

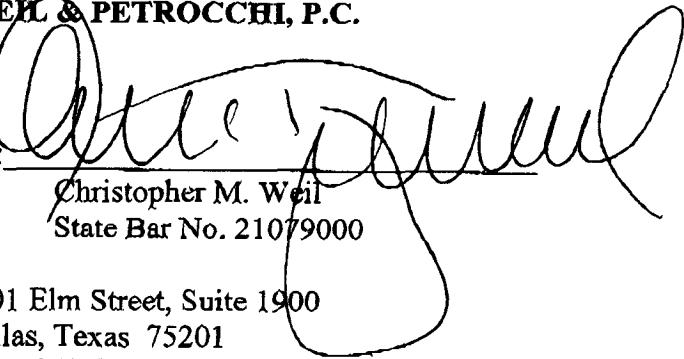
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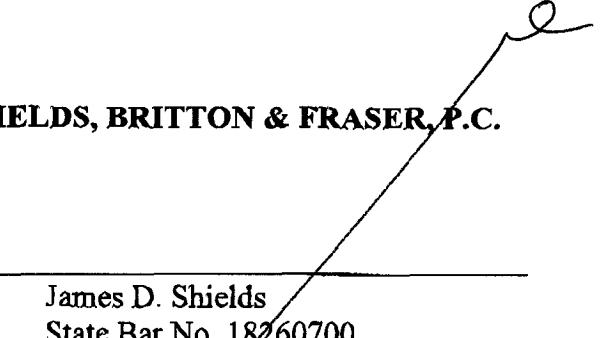
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**Defendants' Findings of Fact and
Conclusions of Law**

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document has been served on the following by certified mail, return receipt requested, this 16th day of August, 2004:

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